

Message Text

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C O N F I D E N T I A L STATE 052422

E.O. 11652: GDS

TAGS: SHUM, UY

SUBJECT: URUGUAY HUMAN RIGHTS REPORT TO CONGRESS
REF: STATE 46674; MVD 865

1. TEXT OF URUGUAY HUMAN RIGHTS REPORT PROVIDED INFORMALLY TO SENATE FOREIGN RELATIONS SUBCOMMITTEE ON FOREIGN ASSISTANCE ON MARCH 2 IS TRANSMITTED FOR UTILIZATION AT YOUR DISCRETION IN INFORMING THE GOU. WE WILL DELIVER COPY TO URUGUAYAN EMBASSY NO LATER THAN MARCH 9 AND INFORM EMBASSY THAT PRINTED VERSION OF CONGRESSIONAL PRESENTATION DOCUMENT (CPD) EXPECTED TO BE DELIVERED FORMALLY TO CONGRESS BY MARCH 23. WE PLAN TO ADVISE THE

URUGUAYAN EMBASSY THAT SUBMISSION OF HUMAN RIGHTS REPORT
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WILL BE INCLUDED IN CPD. DEPARTMENT WILL ALSO COMPLY WITH REQUEST FROM HUMPHREY'S SENATE FOREIGN ASSISTANCE SUBCOMMITTEE FOR COPIES OF REPORTS ON URUGUAY AND CHILE; FOLLOWING IS FINAL TEXT OF HUMAN RIGHTS REPORT FOR URUGUAY.

2. BEGIN TEXT:

I. POLITICAL SITUATION

THE URUGUAYAN LONG-STANDING TRADITION OF DEMOCRATIC AND REPRESENTATIVE GOVERNMENT HAS BEEN ALTERED SUBSTANTIALLY.

THE COUNTRY ENCOUNTERED GROWING ECONOMIC AND SOCIAL DIFFICULTIES DURING THE 1950S AND 1960S, OUT OF WHICH GREW THE TUPAMARO URBAN GUERRILLA MOVEMENT. AFTER A PROLONGED PERIOD OF INTERNAL TURMOIL AND GROWING TERRORIST ACTIVITY, A STATE OF INTERNAL WAR, RESTRICTING CIVIL RIGHTS, WAS APPROVED BY THE CONGRESS IN APRIL 1972. THE CONGRESS APPROVED A NATIONAL SECURITY LAW IN JULY 1972. THE SUPREME COURT UPHELD ITS CONSTITUTIONALITY. IN JUNE 1973 THE EXECUTIVE, WITH SUPPORT OF THE MILITARY, CLOSED THE CONGRESS, APPOINTED A COUNCIL OF STATE IN ITS PLACE AND INCREASED THE MILITARY'S PARTICIPATION IN THE GOVERNMENT. ON JUNE 12, 1976, PRESIDENT JUAN MARIA BORDABERRY WAS REMOVED FROM OFFICE BY THE ARMED FORCES. MR. APARICIO MENDEZ WAS SWORN IN AS PRESIDENT FOR A FIVE YEAR TERM ON SEPTEMBER 1, 1976.

II. LEGAL SITUATION

THE URUGUAYAN CONSTITUTION OF 1967 PROVIDES FOR MOST OF THE RIGHTS AND GUARANTEES FOUND IN WESTERN DEMOCRACIES. BEGINNING IN 1972, SECURITY MEASURES HAVE BEEN TAKEN BY THE URUGUAYAN GOVERNMENT RESULTING IN CURTAILMENT OF CERTAIN INDIVIDUAL RIGHTS AND GUARANTEES. THE "LAW OF STATE SECURITY AND INTERNAL ORDER" OF JULY 1972, WHICH SUPERSEDED THE DECLARATION OF A STATE OF INTERNAL WAR AND REMAINS IN EFFECT, GAVE THE LEGAL DEFINITION OF CONFIDENTIAL

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TERRORISM, SUBVERSION AND "OTHER CRIMES AGAINST THE NATION" (AS SET OUT IN ARTICLE 60 OF THE MILITARY PENAL CODE). THIS LAW, WHICH IS STILL VALID, PROVIDES FOR THE MILITARY TO HANDLE THE PRE-TRIAL INVESTIGATION AND ARRAIGNMENT OF PERSONS ACCUSED OF SUCH CRIMES. IN SEPTEMBER 1972, WITH THE CONSENT OF CONGRESS, THE GOVERNMENT SUSPENDED A NUMBER OF GUARANTEES OF INDIVIDUAL RIGHTS. THESE INCLUDED INVIOABILITY OF THE HOME WITH RESPECT TO UNAUTHORIZED SEARCHES AND SEIZURES; INVIO-

ABILITY OF THE PERSON FROM ARREST EXCEPT ON PROBABLE CAUSE; THE RIGHTS OF AN ARRESTED PERSON TO BE BROUGHT BEFORE A JUDGE WITHIN 24 HOURS; THE RIGHT TO HAVE SUMMARY PROCEEDINGS WITHIN 48 HOURS, AND IN THE PRESENCE OF A DEFENSE ATTORNEY; AND, THE RIGHTS OF HABEAS CORPUS.

IN JUNE 1973, A PRESIDENTIAL DECREE ISSUED WITHOUT REFERENCE TO THE CONGRESS CONTINUED THE DETENTION OF PERSONS WHOSE CONDUCT THE EXECUTIVE DESCRIBED AS A DANGER TO THE SECURITY OF THE STATE AND THE PUBLIC ORDER. THE DECREE ALSO AUTHORIZED THE ARREST, AS AN EMERGENCY MEASURE, OF PERSONS PRESUMABLY INVOLVED IN SUBVERSIVE ACTIVITIES.

ON DECEMBER 18, 1975 THE COUNCIL APPROVED A LAW WHICH

EXTENDED THE JURISDICTION OF MILITARY COURTS TO COVER THE TRIAL AND SENTENCING OF PERSONS ACCUSED OF TERRORISM, SUBVERSION AND CRIMES AGAINST THE NATION.

A STATE OF DANGER LAW HAS RECENTLY BEEN PROPOSED TO PERMIT CIVILIAN COURTS TO TAKE JURISDICTION IN CERTAIN CASES WHICH NOW ARE WITHIN MILITARY COMPETENCE UNDER THE EMERGENCY SECURITY LAWS. THE COUNCIL OF STATE, ON DECEMBER 21, 1976, APPROVED LEGISLATION REDUCING MINIMUM SENTENCES FOR CERTAIN ACTIVITIES ASSOCIATED WITH SUBVERSION. AS OF THE DATE THIS ASSESSMENT WAS WRITTEN, HOWEVER, THERE HAD NOT BEEN SUFFICIENT EXPERIENCE TO PREDICT THE
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EFFECT OF THE NEW AND PROPOSED LEGISLATION.

III. OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

A. INTEGRITY OF THE PERSON

ARTICLE 3: WHILE THE RIGHT TO LIFE, LIBERTY AND THE SECURITY OF PERSONS IS GUARANTEED IN THE CONSTITUTION, THERE HAVE BEEN INSTANCES WHERE PERSONS ACCUSED OF TERRORISM, SUBVERSION OR OTHER CRIMES AGAINST THE NATION HAVE BEEN DENIED THESE BASIC HUMAN RIGHTS.

ARTICLE 5: TORTURE AND OTHER FORMS OF CRUEL, INHUMANE, AND DEGRADING TREATMENT OR PUNISHMENT ARE PROHIBITED BY THE CONSTITUTION. SUCH TREATMENT OCCURED MOST FREQUENTLY AT THE HEIGHT OF THE ANTI-TUPAMARO ACTIVITY. IT STILL OCCURS. THERE HAVE BEEN REPORTS THAT SECURITY FORCES HAVE ENGAGED IN ARBITRARY KILLINGS AND TORTURE. THE HIGHEST GOVERNMENT OFFICIALS STATE THAT SUCH ABUSES ARE NOT CONSISTENT WITH GOVERNMENT POLICY AND ARE NOT KNOWINGLY SANCTIONED OR CONDONED BY THEM. URUGUAYAN OFFICIALS STATE THAT INQUIRIES HAVE BEEN MADE INTO ALLEGATIONS OF ABUSE, AND DISCIPLINARY ACTION HAS BEEN TAKEN AGAINST THOSE FOUND RESPONSIBLE. THERE IS NO INDEPENDENT CORROBORATION OF THIS.

ARTICLE 8: WHILE ALL URUGUAYANS SHARE THE CONSTITUTIONAL RIGHT OF RECOURSE TO THE COURTS, IT IS DIFFICULT TO OBTAIN RELIEF IN SECURITY CASES WHICH ARE TRANSFERRED TO MILITARY JURISDICTION BY THE LAW PASSED BY CONGRESS IN 1972. THIS LAW WAS UPHELD BY THE SUPREME COURT. BUT EVEN IN SECURITY CASES THERE EXISTS THE RIGHTS OF APPEAL, AT LEAST IN THEORY.

ARTICLE 9: URUGUAYANS ACCUSED OF ORDINARY CIVIL AND CRIMINAL VIOLATIONS BENEFIT FROM CONSTITUTIONAL GUARANTEES AGAINST ARBITRARY ARREST AND DETENTION. THE GUARANTEES OF

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INVOLABILITY OF PERSONS FROM ARREST EXCEPT FOR PROBABLE CAUSE, HABEAS CORPUS AND SPEEDY ARRAIGNMENT HAVE BEEN SUSPENDED FOR PERSONS ACCUSED OF TERRORISM, SUBVERSION AND OTHER CRIMES AGAINST THE NATION. CONSEQUENTLY THE MILITARY HAS WIDE LATITUDE IN ARRESTING SUCH PERSONS.

AN INTENSIFIED CAMPAIGN AGAINST COMMUNIST PARTY MEMBERS AND OTHERS LED TO NUMEROUS ARRESTS IN LATE 1975 AND EARLY 1976. SOME PERSONS HAVE SOUGHT ASYLUM IN FOREIGN EMBASSIES. WHILE PROCESSING HAS OFTEN BEEN SLOW, EVENTUALLY ALL HAVE BEEN PERMITTED TO GO INTO EXILE. THE RIGHTS OF VOLUNTARY EXILE UNDER ARTICLE 168(17) OF THE CONSTITUTION HAS ALSO BEEN GRANTED TO SOME PERSONS ARRESTED UNDER SECURITY MEASURES.

ARTICLE 10: NATIONAL SECURITY CASES ARE SUBJECT TO THE MILITARY COURT SYSTEM FOR PRE-TRIAL INVESTIGATIONS, ARRAIGNMENT, TRIAL AND SENTENCING. PRISONERS ACCUSED OF SUBVERSIVE ACTIVITIES OFTEN ARE NOT IMMEDIATELY INFORMED OF THE CHARGES AGAINST THEM. LENGTHY DELAY BEFORE TRIAL IS COMMON.

ARTICLE 11: BECAUSE PRE-TRIAL INVESTIGATION, ARRAIGNMENT, TRIAL AND SENTENCING ARE NOW WITHIN THE COMPETENCE OF THE MILITARY COURT SYSTEM, THE ATTORNEYS OF THOSE ACCUSED OF TERRORISM, SUBVERSION AND OTHER CRIMES AGAINST THE NATION HAVE LESS OPPORTUNITY TO MAKE AN EFFECTIVE DEFENSE. UNDER THIS SYSTEM LAWYERS ARE NOT PERMITTED ACCESS TO THEIR CLIENTS DURING PRE-TRIAL PROCEEDINGS. ACCESS IS PERMITTED AT LATER STAGES. THERE IS THE RIGHT OF APPEAL.

THE PRE-TRIAL INVESTIGATION IS A PARTICULARLY IMPORTANT STAGE OF THE JUDICIAL PROCESS, AND THE JUDGE WHO PRESIDES OVER THE PRELIMINARY INVESTIGATION PLAYS AN IMPORTANT ROLE. THE MILITARY JUDGES WHO HANDLE THE PRELIMINARY JUDICIAL PROCESSING OF PERSONS ACCUSED OF "CRIMES AGAINST CONFIDENTIAL

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THE NATION" ARE NOT, BY AND LARGE, TRAINED LAWYERS.

IN NOVEMBER 1976 THE GOVERNMENT ANNOUNCED THAT JUST OVER 1800 PERSONS WERE STILL DETAINED FOR CRIMES AGAINST THE STATE. THIS FIGURE, APPEARS TO BE SUBSTANTIALLY CORRECT ALTHOUGH IT IS SIGNIFICANTLY LESS THAN ESTIMATES BY OTHER SOURCES, SUCH AS AMNESTY INTERNATIONAL.

B. OTHER FREEDOMS

URUGUAY IS LARGELY FREE FROM DISCRIMINATION BASED ON RACE AND RELIGION. IN GENERAL, URUGUAYANS ARE FREE TO MOVE

WITHIN THE COUNTRY AND TO GO ABROAD, BUT SOME LIMITATIONS MAY BE IMPOSED ON MOVEMENT ON NATIONAL SECURITY GROUNDS.

URUGUAYANS HAVE THE RIGHT TO OWN PROPERTY, BUT THE GOVERNMENT CAN TEMPORARILY EMBARGO PROPERTY OF PERSONS ACCUSED OF CRIMES AGAINST THE NATION. PROPERTY ACTUALLY USED OR INTENDED FOR USE IN SUCH CRIMES CAN BE CONFISCATED OUTRIGHT.

THE CONSTITUTIONAL GUARANTEE OF FREEDOM OF RELIGION IS RESPECTED IN URUGUAY. FREEDOM OF EXPRESSION IS RESTRICTED. DIRECT MEDIA CRITICISM OF THE GOVERNMENT IS ALMOST NON-EXISTENT AND ESPOUSAL OF MARXIST AND EXTREMIST PHILOSOPHIES IS NOT TOLERATED. THE MEDIA OPERATES UNDER A SYSTEM OF SELF-CENSORSHIP WITHIN GUIDELINES ESTABLISHED BY THE AUTHORITIES. THOSE GUIDELINES ARE NEITHER CONSISTENT NOR COMPLETE, BUT ARE APPLIED CONSISTENTLY BY GOVERNMENT DIRECTION TO EXPRESSION OF MARXIST OR EXTREMIST PHILOSOPHIES. THE RIGHT OF ASSEMBLY IS RESTRICTED, IN THAT POLITICAL MEETINGS CANNOT BE HELD. THE GOVERNMENT DISSOLVED THE COMMUNIST PARTY, THE SOCIALIST PARTY, AND TWELVE OTHER MARXIST POLITICAL GROUPS AND STUDENT ASSOCIATIONS. THE DISSOLUTION DECREE AUTHORIZED THE CONFISCATION OF THESE ORGANIZATIONS' GOODS AND THE CLOSING OF THEIR CONFIDENTIAL

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PLACES OF BUSINESS. OTHER MAJOR POLITICAL PARTY HEAD-QUARTERS REMAIN OPEN AND ELECTED OFFICERS OF THE PARTIES REMAIN AT LIBERTY. IN SOME CASES THEY HOLD GOVERNMENT POSITIONS. LABOR UNION ACTIVITY IS CURRENTLY SUSPENDED.

IV. OTHER HUMAN RIGHTS REPORTING

IN 1974 THE SECRETARY GENERAL OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ) ALONG WITH AN AMNESTY INTERNATIONAL RESEARCH OFFICER VISITED URUGUAY. IN JUNE OF THAT YEAR, THE ICJ AND AMNESTY ISSUED A REPORT SUMMARIZING THE PROCEDURES USED IN THE DETENTION OF SUSPECTS UNDER THE URUGUAYAN LAW OF STATE SECURITY AND INTERNAL ORDER, AND CHARGING MISTREATMENT. TWO SUPPLEMENTARY ICJ REPORTS CHARGED THAT THE HUMAN RIGHTS SITUATION HAD DETERIORATED. THE ICJ'S JUNE 1976 REVIEW DESCRIBED THE SITUATION AS "VERY GRAVE".

AMNESTY INTERNATIONAL ANNUAL REPORT 1974-75 CLAIMED THAT THE URUGUAYAN GOVERNMENT'S "ATTEMPTS TO EXTEND SEVERE POLITICAL CONTROL OVER ALL ASPECTS OF SOCIETY HAS INCREASED THE IMPRISONMENT OF PEACEFUL DISSENTERS AND, CONSEQUENTLY, CREATED A LARGE NUMBER OF PRISONERS OF CONSCIENCE". THE REPORT ALSO CHARGED THAT "TORTURE HAS BECOME ROUTINE PRACTICE" FOR PRISONERS IN MILITARY

BARRACKS. IN FEBRUARY 1976 AMNESTY LAUNCHED A WORLDWIDE CAMPAIGN AGAINST TORTURE IN URUGUAY. THE AMNESTY INTERNATIONAL REPORT 1975-76 ESTIMATED THE NUMBER OF POLITICAL PRISONERS IN THE COUNTRY AT ABOUT 5,000. THE REPORT ASSERTED THAT "THE USE OF TORTURE HAS BECOME ROUTINE IN NEARLY ALL CASES OF POLITICAL IMPRISONMENT". THE REPORT ALSO REFERRED TO HARASSMENT OF URUGUAYAN POLITICAL REFUGEES IN ARGENTINA, AND TO THE MAY 1976 MURDER OF FOUR URUGUAYANS THERE.

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THE 1975 ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, PUBLISHED IN JUNE 1976, LISTS 22 COMPLAINTS COVERING AT LEAST 290 INDIVIDUAL CASES IN URUGUAY. ALMOST ALL OF THESE ARE COMPLAINTS OF MISTREATMENT OF PRISONERS AND/OR ARBITRARY OR PROLONGED DETENTION BETWEEN 1972 AND 1975.

FREEDOM HOUSE LISTS URUGUAY AS "NOT FREE".

END TEXT.

3. WE WILL REPLY SEPARATELY TO MVD 865 REGARDING USG POLICY OF APPROVING GOU CASH AND PRIOR YEAR FMS FINANCING PURCHASES.

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